

EXHIBIT 5

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Attorneys for Defendants Power
Ventures, Inc. and Steve Vachani

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FACEBOOK, INC.,

Plaintiff,

-against-

POWER VENTURES, INC. d/b/a POWER.COM, a
California corporation; POWER VENTURES, INC.
a Cayman Island Corporation, STEVE VACHANI,
an individual; DOE 1, d/b/a POWER.COM, an
individual and/or business entity of unknown nature;
DOES 2 through 25, inclusive, individuals and/or
business entities of unknown nature,

Defendants.

Case No. 5:08-cv-05780 JF (RS)

**DEFENDANT POWER VENTURES,
INC.'S RESPONSES TO
FACEBOOK, INC.'S FIRST SET OF
INTERROGATORIES**

Power is presently unaware of any Facebook accounts created by Power employees for purposes of their employment with Power.

INTERROGATORY NO. 5:

Describe in detail how AND IDENTIFY when YOU first became aware that FACEBOOK had IP blocks to keep YOU OR POWER USERS from accessing the FACEBOOK WEBSITE.

RESPONSE TO INTERROGATORY NO. 5:

Power objects that this interrogatory is vague and ambiguous. Subject to and without waiving those objections, Power states that on or about December 15, 2008 it received an email from Facebook's counsel, Joseph P. Cutler, stating that "Facebook has taken technical measures to limit the interaction between Power.com and its network at this time."

INTERROGATORY NO. 6:

Describe in detail how AND IDENTIFY when YOU first learned that YOU did not have FACEBOOK's permission to access the FACEBOOK WEBSITE.

RESPONSE TO INTERROGATORY NO. 6:

Power objects that this interrogatory is vague and ambiguous, overbroad, unduly burdensome, and seeks information that is not within Power's possession, custody or control. Subject to and without waiving those objections, Power states that on or about December 1, 2008 it received a letter from Facebook's counsel, Joseph P. Cutler, stating that Power's activities violated "Facebook's Terms of Use."

INTERROGATORY NO. 7:

Describe in detail and IDENTIFY the process by which YOU continued to access, OR provide POWER USERS' with the means to access, the FACEBOOK WEBSITE following FACEBOOK's IP blocking, including, but not limited to the POWER employee(s) OR director(s) responsible for that process OR decision.

/ / /

RESPONSE TO INTERROGATORY NO. 7:

Power objects that this interrogatory is vague and ambiguous, overbroad, unduly burdensome, and seeks information that is not within Power's possession, custody or control. Subject to and without waiving those objections, Power had implemented an industry standard practice to refresh, randomize, and rotate IP addresses. Power's IP addresses were regularly updated for all Power users on all social networks. These processes for updating IPs are commonplace industry standard practices which Power had implemented prior to the dispute with Facebook. Power did not change its process for providing users with access to their Facebook accounts in response to any attempted "IP blocking" by Facebook. The person responsible for Power's conduct in this regard was its CEO, Steven Vachani.

INTERROGATORY NO. 8:

IDENTIFY the POWER employee OR director responsible for developing the technology to allow POWER OR POWER USERS to access the FACEBOOK WEBSITE.

RESPONSE TO INTERROGATORY NO. 8:

Steven Vachani.

INTERROGATORY NO. 9:

IDENTIFY the POWER employee OR director responsible for developing the technology to allow POWER OR POWER USERS to continue to access the FACEBOOK WEBSITE following FACEBOOK's IP blocking.

RESPONSE TO INTERROGATORY NO. 9:

Steven Vachani.

INTERROGATORY NO. 10:

IDENTIFY the POWER employee OR director responsible for creating the e-mail messages sent to FACEBOOK USERS asking FACEBOOK USERS to use the POWER WEBSITE to access the FACEBOOK WEBSITE.

1 **RESPONSE TO INTERROGATORY NO. 10:**

2 Steven Vachani.

3 **INTERROGATORY NO. 11:**

4 Describe in detail the creation of POWER's internet user Bill of Rights including, but not
5 limited to, the individual(s) responsible for drafting it, the date(s) it was drafted and the date it was
6 posted on the POWER WEBSITE.
7

8 **RESPONSE TO INTERROGATORY NO. 11:**

9 Power objects that this interrogatory seeks to elicit information protected by the attorney
10 client privilege, the attorney work product doctrine. Subject to and without waiving those
11 objections, Power states that Power's internet user Bill of Rights was posted to Power.com on or
12 about July 1, 2010.
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14 **INTERROGATORY NO. 12:**

15 IDENTIFY the members of YOUR "product team" responsible for integrating the POWER
16 WEBSITE with FACEBOOK Connect, as referenced in YOUR December 17, 2008 e-mail to
17 FACEBOOK's legal counsel. Dkt. No. 56 at Ex. A.

18 **RESPONSE TO INTERROGATORY NO. 12:**

19 Eric Santos, 305 West Broadway, Suite 137, New York, NY 10013.

20 **INTERROGATORY NO. 13:**

21 Explain in detail what actions, if any, YOU took to integrate the POWER WEBSITE with
22 FACEBOOK Connect.
23

24 **RESPONSE TO INTERROGATORY NO. 13:**

25 Pursuant to Fed. R. Civ. P. 33(d), Power refers to its business records including its email
26 correspondence concerning these issues, which will be produced upon entry of an appropriate
27 protective order. Power's team worked relentlessly and diligently to integrate Facebook Connect
28

1 and explicitly communicated these efforts to Facebook. In December 2008 and January 2009, it
 2 was Power's highest priority to innovate and launch Facebook connect through Power.com.

3 **INTERROGATORY NO. 14:**

4 Describe in detail YOUR "detailed product plan" regarding the "reintegration of Facebook
 5 with Facebook connect," referenced in YOUR December 17, 2008 e-mail to FACEBOOK's legal
 6 counsel. Dkt. No. 56 at Ex. A.

7 **RESPONSE TO INTERROGATORY NO. 14:**

8 Pursuant to Fed. R. Civ. P. 33(d), Power refers to its business records including its email
 9 correspondence concerning these issues, which will be produced upon entry of an appropriate
 10 protective order.

11 **INTERROGATORY NO. 15:**

12 IDENTIFY ALL facts in support of YOUR contention that POWER had "concerns"
 13 regarding the integration of the POWER WEBSITE with FACEBOOK Connect on the schedule
 14 requested by FACEBOOK, as asserted in POWER's Answer and Counterclaim to FACEBOOK.
 15 Dkt. No. 41 at ¶ 60.

16 **RESPONSE TO INTERROGATORY NO. 15:**

17 Pursuant to Fed. R. Civ. P. 33(d), Power refers to its business records including its email
 18 correspondence concerning these issues, which will be produced upon entry of an appropriate
 19 protective order.

20 **INTERROGATORY NO. 16:**

21 IDENTIFY the individual(s) responsible for the "business decision" not to remove existing
 22 compatibility while implementing POWER's integration with FACEBOOK Connect, as referenced
 23 in YOUR December 26, 1008 e-mail to FACEBOOK's legal counsel. Dkt. No. 56 at Ex. A.

24 **RESPONSE TO INTERROGATORY NO. 16:**

25 Steven Vachani.

1 their personal data. Power respects and honors the trust that Power users have placed in Power to
 2 securely access and store their data. Power responsibly and securely stores its users' data, and
 3 Power has never had a security breach. Unless a user requests that his or her data be deleted,
 4 Power does not delete users' data. Power has a responsibility to preserve and store this data for the
 5 user, and Power respects and honors that responsibility. Power does not delete data that users have
 6 expect us to store and to maintain for them, just as Yahoo, Gmail and Facebook, for example, do
 7 not delete data that their users expect them to store and to maintain.

8
 9 Dated: December 15, 2010

BRAMSON, PLUTZIK, MAHLER &
 BIRKHAUSER, LLP

11 By _____/s/_____
 12 L. Timothy Fisher

13 Alan R. Plutzik (State Bar No. 77785)
 14 L. Timothy Fisher (State Bar No. 191626)
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20 Attorneys for Defendants Power
 Ventures, Inc. and Steve Vachani
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VERIFICATION


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I, Steve Vachani, declare that:

I am a defendant in the above-captioned action. I have read POWER VENTURES INC.'S RESPONSES TO FACEBOOK'S FIRST SET OF INTERROGATORIES, and know the contents thereof. The responses are true of my own knowledge except as to the matters therein stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed at 5:00pm in San Francisco on December 15, 2010.


Steve Vachani

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Bramson, Plutzik, Mahler & Birkhaeuser, LLP, 2125 Oak Grove Road, Suite 120, Walnut Creek, CA 94598. On December 15, 2010, I served the within documents:

- **DEFENDANT POWER VENTURES, INC.'S RESPONSES TO FACEBOOK, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS**
- **DEFENDANT POWER VENTURES, INC.'S RESPONSES TO FACEBOOK, INC.'S FIRST SET OF INTERROGATORIES**
- **DEFENDANT POWER VENTURES, INC.'S RESPONSES TO FACEBOOK, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION**

☒ by placing a copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Walnut Creek, California addressed as set forth below.

☐ by depositing a true copy of the same enclosed in a sealed envelope with delivery fees provided for a Federal Express pick up box or office designated for overnight delivery, and addressed as set forth below.

☐ By causing a process server to personally deliver a copy of the document(s) listed above to the person(s) at the address(es) set forth below

☐ by facsimile transmission on that date. This document was transmitted by using a Canon LC 710 facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number (925) 945-8792. The transmission was reported as complete and without error.

☐ by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by pdf transmission. These documents were transmitted via e-mail to the following e-mail addresses as set forth below.

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Attorneys for Facebook, Inc.

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7 Facsimile: 212-989-9163
8 Email: scott@bursor.com

9 I am readily familiar with the firm's practice of collecting and processing correspondence for
10 mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day
11 with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of
12 the party served, service is presumed invalid if postal cancellation date or postage meter date is
13 more than one day after date of deposit for mailing in affidavit.

14 I declare under penalty of perjury under the laws of the State of California that the above is true
15 and correct, executed on December 15, 2010, at Walnut Creek, California.

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Peggy Toovey